

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROCOCO ASSOCIATES, INC.,

Plaintiff,

-against-

ORDER
CV 06-975 (JS)(ARL)

AWARD PACKAGING CORP., et al.,

Defendants.

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LINDSAY, Magistrate Judge:

Before the court is the plaintiff's letter motion, dated May 10, 2007, seeking to permission to depose a non-party, Daniel Russell, remotely by stenographically recorded video conference pursuant to Federal Rule of Civil Procedure 30(b)(7). According to the plaintiff, Mr. Russell is believed to be the former owner and officer of defendant Award Packaging Corp. and is a resident of Florida. Plaintiff anticipates that the deposition will take approximately two hours. Plaintiff contends that expense associated with air travel to Florida for counsel outweighs any concern opposing counsel may have with regard to the proposed video conference. The court notes that plaintiff's letter does not reflect service on Mr. Russell.

Defendants Award Packaging and R&E Packaging, LLC oppose the application by letter dated May 15, 2007. While defense counsel's letter states that they do not represent Mr. Russell, they oppose the application on his behalf. Defendants contend that the relief sought in this court is improper because: (1) the plaintiff has not served a Rule 45 subpoena for the deposition of Mr. Russell; and (2) this court lacks jurisdiction to consider the plaintiff's request because the deponent would answer questions in Florida, well-beyond the 100-mile jurisdictional reach of this court under Rule 45(b)(2). The court agrees.

Depositions of non-parties are governed by Rule 45. Accordingly, there is no basis to

compel the deposition of Mr. Russell given the plaintiff's failure to follow Rule 45's procedures. In addition, even if the plaintiff had complied with Rule 45, because the deposition is to be conducted in Florida, this court is without jurisdiction to order the relief sought. Fed. R. Civ. P. 45(b)(2).

Dated: Central Islip, New York
May 16, 2007

/s/

ARLENE ROSARIO LINDSAY
United States Magistrate Judge